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THE CODE OF 1919.*

It is not to be expected that, in an address of this kind, reference can be made to all of the material changes made in the Code which occupied the time of the revisors for a period of three years. The most that can be expected is to make a selection of such changes as will most probably be of interest to the profession. Before proceeding with the selection, however there are a few preliminary matters which should be brought to your attention.

Although the new Code was adopted in 1918 and does not go into effect until January 13, 1920, its official designation is the "Code of 1919."¹ This designation was suggested by the revisors when it was expected that the Code would go into effect in January, 1919, and was not changed by the legislature when it changed the date for it to go into effect. The Code will appear in two forms, one annotated and the other not. The unannotated Code will appear in a single volume, and will be very similar to the Code of 1887, except that it will contain some additional prefatory matter, and the Tax-bill will appear in the Appendix, but it will not contain any reference to cases such as is given on the margin of the sections in that Code. The annotated Code will appear in two volumes about the size and appearance of Pollard's Code of 1904. Immediately after the text, there will be placed the revisors' notes where material changes have been made, calling attention to the change and the reasons therefor. These will be printed in black face type so as to readily catch the eye, and distinguish them from the text and other matter following. Immediately after the revisors' notes,

*An address before the Virginia State Bar Association, May 16, 1919, by Judge Martin P. Burks, of the Supreme Court of Appeals, one of the Code revisors.

1. Acts 1918, p. 211.

there will be placed in a different type the annotations. These annotations embrace all of Pollard's previous annotations, and also additional annotations of later date, all revised and, as far as necessary, re-arranged and brought down to date of enactment of the Code. They run through 120 Va., 244 U. S., 248 Fed., and 2 Va. Law Reg. (N. S.). As the Code of 1887 contained all Acts of a general nature in force at its adoption, and repealed all such Acts not contained therein or preserved thereby, the new Code makes no reference to Acts of an earlier date. The Acts of 1918 are deemed to be Acts subsequent to the new Code by express provision of the latter. Wherever they affect any provision of the new Code, whether in conflict therewith or not, they are referred to in the revisors' notes to the appropriate section.

In the prefatory matter to both Codes there is a table of sections of the Code of 1887 giving the corresponding section of the new Code. No further table was deemed necessary, as each section of the new Code which is taken from the old contains a reference to the latter.

Some changes were made in the arrangement of the titles, and a number of new titles were added. The Code of 1887 contained 4205 sections. The Code of 1919 contains 6571 sections. The new Code consists of three grand divisions which may be designated as Political or Administrative, Criminal and Civil, which appear in the order mentioned. It has not always been possible to keep every section, or even every chapter in its appropriate division, as some of them are applicable to the whole Code, but it has been done as far as it was practical to do. The political or Administrative law will appear in Volume 1, the residue of the Code, including the index, in Volume 2. It was very desirable to include the Statute relating to Corporations, as well as some others, in Volume 2, but it was found that this could not be done without making the two volumes of very uneven size.

No attempt will be made to review the changes made in Vol. 1 of the Annotated Code, except in a single instance. It has been held in several cases that officers and servants of a corporation were not *ex officio* agents of the corporation for the

purpose of making affidavits.² For the purpose of changing the law as announced in these cases, the revisors inserted a section declaring that "an affidavit by or for a corporation may be made by its president, vice-president, general manager, cashier, treasurer, or a director, without any special authorization therefor, or by any person authorized by a majority of the stockholders or directors to make the same; and when an affidavit is made by any person other than the principal authorized by law to make it, such person shall be deemed to have been the agent of the person so authorized until the contrary is made to appear."³ The latter part of the section is intended to apply in all cases, whether the principal be a natural or artificial person. If the affidavit has been made by one purporting to act as the agent of another, the Statute raises a *prima facie* presumption that he was such agent, and throws the burden of showing the contrary on him who denies the agency.

CRIMINAL LAW.

Until the year 1914 the punishment for murder in the first degree was death,⁴ but the section was amended in 1914 so as to permit a sentence of confinement in the penitentiary for life if the death penalty was not imposed.⁵ This was thought by the revisors to be a proper and much needed amendment, but in their opinion did not go quite far enough; and in order to meet a class of cases where the evidence shows the defendants guilty of first degree murder, but, on account of the circumstances of the particular case the jury would not be willing to inflict the extreme penalty, the revision enacts that the death penalty, confinement in the penitentiary for life, *or for any term not less than twenty years* may be imposed, thus giving latitude in fixing the punishment without thereby making the minimum insufficient to fit the enormity of the crime.⁶ It seemed to the re-

2. Merriman Co. v. Thomas, 103 Va. 24, "Bookkeeper;" Taylor v. S. M. Tob. Co., 107 Va. 787, "Secretary and Treasurer;" Damron v. Bank, 112 Va. 544, "Vice President," "Director;" Clement v. Adams, 113 Va. 547, "President."

3. Sec. 276.

5. Acts 1914, p. 419.

4. Code 1887, Sec. 3663.

6. Sec. 4394.

visors, also, that there should be no gap between the minimum punishment for first degree murder and the maximum for second degree murder. The latter has therefore been increased from eighteen years in the penitentiary to twenty years.⁷

Under the Code of 1887⁸ involuntary manslaughter is a misdemeanor and punishable as such; but in view of the many injuries and deaths resulting from the careless and negligent operation of steam engines, electric cars, automobiles and motor vehicles of various kinds, the revisors deemed it wise to increase substantially the maximum punishment; and under the new Code this crime is punishable by confinement in the penitentiary not less than one year nor more than five years; or, in the discretion of the jury, by a fine of not exceeding one thousand dollars, or confinement in jail not exceeding one year, or both.⁹

The punishment for petit larceny generally is now confinement in jail not less than fifteen days nor more than six months, or by fine of not less than five nor more than one hundred dollars, or both.¹⁰ The jail part of the punishment has been changed by the revision to not less than ten days nor more than twelve months, thus giving more latitude to the justice, court, or jury, as the case may be, in fixing it.¹¹

In view of the fact that upon an indictment for larceny the proof may show simple larceny, embezzlement, obtaining goods by false pretenses, or fraudulent removal of goods which have been levied on, etc., the revisors considered it wise to insert a provision allowing the defendant, on trial of an indictment for larceny, to demand a statement in writing from the attorney for the Commonwealth of what statute he intends to rely upon to ask for conviction.¹² This much, it would seem, the defendant is entitled to, and the provision accords with the policy announced in a recent case in the Supreme Court of Appeals in which the blanket indictment authorized by the prohibition act was attacked, where it was held that, independently of statute, if an indictment did not give the accused the information to which he was entitled under the Constitution, the trial court had inher-

7. Sec. 4395.

8. Sec. 3666.

9. Sec. 4397.

10. Code 1904, Sec. 3707.

11. Sec. 4440.

12. Sec. 4451.

ent power to require the Commonwealth to furnish a bill of particulars.¹³

The revised section relating to the punishment for perjury and subornation of perjury no longer expressly makes a distinction between perjury committed on a trial for felony and the same crime committed on any other occasion, but leaves it in the discretion of the jury to impose the jail sentence, or fine, or both, in any case. The revisors thought that more latitude should be given the tribunal in fixing the punishment for these crimes.¹⁴

As the law now stands, a person convicted of perjury or subornation of perjury is disqualified from giving evidence as a witness.¹⁵ The revision removes this disqualification.¹⁶ A learned text-writer, in discussing disqualifications of this sort, says that "the policy of absolute exclusion for persons convicted of crime can no longer be defended. Nevertheless, legislation has not yet everywhere caught up with enlightened opinion."¹⁷ Even under the law now in force, conviction of perjury or subornation of perjury in another jurisdiction does not disqualify.¹⁸ Furthermore, at present, as a general rule, persons convicted of felony are not competent witnesses unless they have been pardoned or punished therefor.¹⁹ This disqualification has also been removed; the new Code declaring that "Conviction of felony or perjury shall not render the convict incompetent to testify, but the fact of conviction may be shown in evidence to affect his credit."²⁰ The general policy adopted in the revision was to remove, as far as possible, all disqualifications of witnesses, in both criminal and civil cases. The subject of the competency of witnesses is further dealt with in the sections of the civil code concerning witnesses.

It had been held by the Supreme Court of Appeals that the publication in a newspaper of insulting language concerning a judge with respect to proceedings had in his court could not be

13. *Pine & Scott v. Com.*, 121 Va. 812; 14 Va. App. 575.

14. Sec. 4494.

15. Code 1887, Secs. 3743 and 6898.

16. Secs. 4495 and 4779.

17. 1 Greenl. Ev. (16th Ed.), Sec. 378a.

18. *Samuels v. Com.*, 110 Va. 901; *Kain v. Angle*, 111 Va. 415.

19. Code 1887, Sec. 3898.

20. Sec. 4779.

said to be "addressed to the judge" within the meaning of the Statute as it then stood,²¹ and that such publisher could not be summarily punished for contempt.²² The court, however, intimated that the statute was defective and should be so amended as to include such a case. This was done.²³

The statutes concerning bigamy now in force are somewhat doubtful of construction, and if a person contracts a second marriage in good faith under a reasonable belief that the former consort is dead (the seven years' continuous absence not being proved), and it subsequently develops that he was mistaken, he would probably be guilty of bigamy.²⁴ The section has been so amended as to avoid such a hardship, but proof of good faith is necessary.²⁵ Furthermore, it has been contended that if a divorced person marry again before the end of the term at which the decree for divorce was entered, such person is guilty of bigamy. This question is settled by providing that such a one shall not be guilty.²⁶ Still another change was made in the section. As it now reads if a former marriage be void but has not been so declared by a court of competent jurisdiction, a person marrying again would probably be guilty of bigamy. It was not believed this was intended, and it was thought that if the former marriage was absolutely void, it should be immaterial whether it had been declared so or not.²⁷

As to offenses against two or more statutes or two or more municipal ordinances, the revisors have inserted a new section declaring that "If the same act be a violation of two or more statutes, or of two or more municipal ordinances, a prosecution or proceeding under one of such acts or ordinances shall be a bar to a prosecution under the other or others."²⁸ This section is intended to regulate a matter which the courts have had trouble in dealing with independently of statute. As prepared by the revisors, however, the section extends only to cases where a single act violates two or more statutes or two or more ordinances.

21. Sec. 3768 of Pollard's Code 1904.

22. *Yoder v. Com.*, 107 Va., at pp. 831, 832.

23. Sec. 4521.

26. Sec. 4539.

24. 4 Va. Law Reg. 71.

27. Sec. 4539.

25. Sec. 4539.

28. Sec. 4775

It should probably be extended still further to cases where a single act violates both one or more statutes *and* one or more ordinances.

Under the Code of 1887 a regular grand jury consisted of not less than sixteen nor more than twenty-four persons, and a special grand jury of not less than six nor more than nine persons. The number of the regular grand jury was reduced by Acts 1889-90, p. 91 to not less than nine persons, and this continued to be the law until the recent revision. It seemed to the revisors that larger grand juries, especially for the larger counties and cities, would be conducive to law enforcement, although, of course, more expensive, and the maximum number of the regular grand jury was therefore increased from twelve to sixteen, and the minimum from nine to eleven.²⁹ The number of persons to be summoned for a regular grand jury was also increased from twelve to not less than twelve nor more than sixteen, the number to be designated by the judge of the court by an order entered of record.³⁰ No change was made concerning special grand juries and these will continue to consist of not less than six nor more than nine persons.³¹ The concurrence of at least nine of a regular grand jury is required under the revision in finding or making an indictment or presentment.³² This change was made in consequence of the other changes just mentioned.

In *Fitch v. Com.*, 92 Va. 824, it was held that an indictment for perjury which contained the charge of the falsity of the oath in the concluding part of the indictment instead of in the charging part was fatally defective, and in that case, although the defendant had had a fair and impartial trial, the court felt compelled to give him a new trial on the ground stated. The revisors considered the holding to be correct, but it seemed to them that the law was defective in not providing for the contingency which there arose. A provision has therefore been added to the section³³ declaring that "*A distinct allegation, averment, or statement in any part of the indictment that the defendant did corruptly swear falsely, or did, on the occasion mentioned in the in-*

29. Sec. 4853.

30. Sec. 4852.

31. Sec. 4853.

32. Sec. 4860.

33. Sec. 4869.

dictment, commit willful perjury, shall be a sufficient allegation of the falsity of the oath alleged to have been taken."

It has been the policy of the State to have criminal cases as well as civil cases tried on their merits, and as far as possible to ignore mere formal defects. This is well illustrated by the powers given the court of appeals in misdemeanor cases.³⁴ The revisors adopted the same policy with reference to all crimes as far as objections apply only to technical difficulties, and liberal provisions are made for amendment of indictments or presentments for misdemeanors *and* indictments for treason or felony, both before and after the defendant pleads.³⁵ The amendments permitted by the sections do not go to the extent of allowing the court to prefer an entirely different charge, but they do allow the court to make such changes as may be deemed technical, and other changes arising out of variance between the allegations and the proof, or which would result in mere delay without substantial benefit to the accused. If the amendment or alteration does not change the nature of the offense charged, there would appear to be no good reason why it may not be made.

It had been decided that in a felony case the accused need not be present when a motion for a continuance was made before arraignment.³⁶ In another case it was intimated that the defendant need not be present when such a motion was made after arraignment.³⁷ The revision expressly enacts that the accused need not be present when a motion for a continuance is made, whether such motion is made before or after arraignment.³⁸

Under the law now in force, no challenge of a juror is allowed the Commonwealth in felony cases, except for cause, and many hung juries with resultant expense to the Commonwealth and delay in the administration of justice are traceable to this fact. Virginia has long stood almost alone among the states of the Union in not giving the right of peremptory challenge to the Commonwealth in felony cases, and it seemed to the revisors that

34. Sec. 4107 of Pollard's Code 1904.

35. Secs. 4876, 4877, 4878.

36. *Kibler v. Commonwealth*, 94 Va. 804.

37. *Benton v. Com.*, 91 Va. et p. 794.

38. Sec. 4894.

this reform in criminal procedure was one which should be accomplished without further delay. The new Code therefore gives the Commonwealth four peremptory challenges and the accused four in felony cases.³⁹ The number to be embraced in the *venire facias* has been increased from sixteen to twenty persons, and the list from twenty to twenty-four.⁴⁰ The panel has been increased from sixteen to twenty.⁴¹

Trial courts have often suspended the execution of judgments in criminal cases supposing that such power of suspension existed under the common law. The revisors did not believe that such power existed, (See *Ex parte United States*, 242 U. S. 27, 37 Sup. Ct. 72), but as it has been often exercised, it was deemed best to forbid it expressly. This is done by the insertion of a new section limiting such power to cases where it is expressly authorized by statute.⁴²

Seven jurors now constitute a jury in a misdemeanor case. Sec. 8 of the Constitution allows a minimum of five, and as this was deemed by the revisors sufficient for misdemeanors, the constitutional minimum was adopted.⁴³

Under an Act of 1916 courts or their judges in vacation are authorized to let to bail prisoners who have been convicted of and sentenced for felonies as well as misdemeanors.⁴⁴ The scope of this Act has been narrowed and made applicable to misdemeanors only.⁴⁵

The question of the jurisdiction of justices of the peace in criminal cases was one that received careful consideration by the revisors. Under the law now in force justices have concurrent jurisdiction with the circuit and corporation courts in certain classes of misdemeanors, and exclusive original jurisdiction of most misdemeanors. The revision changes this and re-enacts the principle of the Code of 1887, but contains broader language, giving the several police justices and justices of the peace *concurrent* jurisdiction with the circuit courts of the counties and the corporation courts of the cities in *all* misdemeanor cases oc-

39. Sec. 4898.

40. Sec. 4895.

41. Sec. 4896.

42. Sec. 4925.

43. Sec. 4927.

44. Acts 1916, p. 390.

45. Sec. 4930.

curing within their jurisdiction, with the exception of violations of the prohibition law. It seemed to the revisors that this change was desirable and would result in great benefit to the Commonwealth in the enforcement of law and order, apart from a probably decreased expense, since appeals from justices will be in a measure reduced.⁴⁶ It will be remembered in this connection that under the revision juries for the trial of misdemeanors will be composed of five instead of seven, as at present.⁴⁷

Prior to 1916 on trial for a felony if it was alleged in the indictment on which the prisoner was convicted, and admitted, or by the jury found that the prisoner had been before sentenced in the United States to a like punishment, it was provided that the prisoner should be sentenced to be confined in the penitentiary five years in addition to the time to which he was or would have been otherwise sentenced;⁴⁸ and in such a case if the convict had been twice before sentenced in the United States to confinement in the penitentiary, it was provided that he should be sentenced to confinement in the penitentiary for life.⁴⁹ No discretion in fixing the additional time was given. To mitigate these harsh provisions, the General Assembly in 1916 amended the two sections so as to give the court much discretion in fixing the additional punishment.⁵⁰ The revision retains the humane provisions of the amendments of 1916, but goes further and does not permit the subject of prior conviction to be made a matter of enquiry on the trial of the principal offense. All proceedings are to be had in the Circuit Court of the city of Richmond after the convict has been received in the penitentiary. It seemed to the revisors unfair to the prisoner, when on trial for a felony, to prejudice his case by alleging and proving on that trial a former conviction of a like offense at another time and place.⁵¹

CIVIL LAW.

Beginning now with the civil code, let me call attention to some of the important changes made in these statutes.

It has been held in *Offield v. Davis*, 100 Va. 250, that common

46. Secs. 4987, 5890, 5910.

47. Sec. 4927.

48. Code 1887, Sec. 3905.

49. Code 1887, Sec. 3906.

50. Acts 1916, pp. 34, 35.

51. Sec. 5054.

law marriages are void in Virginia. The revisors saw no reason for changing that interpretation of the statute, which they thought was correct, but it was suggested that if the provisions of the statute requiring a license is mandatory, other provisions in connection with the license might possibly also be regarded as mandatory, and that many marriages entered into *bona fide* and in the honest belief that everything proper had been performed, might be declared void, and innocent persons made to suffer. In order to meet this contingency, the revision enacts that there shall always be a license,⁵² but that if the marriage is celebrated under a license, no defect, omission or imperfection in such license shall render the marriage void, where the parties, or either of them, *bona fide* believed that they were entering into a valid marriage.⁵³

Material changes were made in the matter of procedure in divorce cases. At present all depositions, when taken in this state, are required to be taken before a commissioner in chancery. This provision was inserted in Sec. 2260 of the Code of 1887 by Acts 1902-3-4, p. 98, as was also the provision limiting to officers the right to serve process or notice. The revisors were convinced that the latter provision should be retained, but that the former furnished no material protection and could be safely dispensed with.⁵⁴ Under Acts 1914, p. 29 an order of publication in divorce cases is permitted to be entered against the defendant, either by the court wherein such suit is pending or by the clerk of said court in vacation. The revision simply provides that the order may be entered by the clerk of the court wherein the suit is pending, either in term time or vacation.⁵⁵

Under the law now in force, husband and wife are not competent witnesses in divorce cases except where the ground of divorce is either cruelty or desertion.⁵⁶ With this provision in the law, it was easy, no matter what the real ground of divorce was, to allege one or the other of these grounds in the bill so as to make the complainant a competent witness. This was often done, and it seemed to the revisors that the bars should be thrown down entirely, so that in *every* case of divorce, husband and wife would

52. Sec. 5071.

54. Secs. 5106, 6042.

53. Sec. 5082.

55. Sec. 5108.

56. Pollard's Code, Sec. 3346a.

be competent witnesses. A real danger suggested itself, however, that of collusive and fraudulent divorces, and to prevent such divorces as far as humanly possible, the revision enacts that no divorce shall be granted in any case on the uncorroborated testimony of the parties, or either of them.⁵⁷

Divorces are steadily increasing in Virginia, as well as elsewhere, and are becoming so numerous that the evil strikes at the heart of our civilization. For manifest reasons the revisors inserted a new section declaring that "On the dissolution of the bond of matrimony *for any cause arising subsequent to the date of the marriage* neither party shall be permitted to marry again for six months from the date of such decree, and such bond of matrimony shall not be deemed to be dissolved as to any marriage subsequent to such decree, or in any prosecution on account thereof, until the expiration of such six months.⁵⁸ The time fixed by this section may be too short, but it furnishes a foundation for further legislation on the subject, if the General Assembly should see fit to enact it.

It has been held in two cases⁵⁹ that in an action by a married woman to recover for a personal injury inflicted on her, loss of time was not a proper element of damage, unless it be averred in the declaration, and shown in the proof, that she was a sole trader, nor the costs of her cure, unless it be likewise averred and proved that she paid such costs out of her separate estate, the reason being that the husband is still entitled to the services of his wife and is bound for her support. These cases dealt with the law touching married women and their estate as it was under Chap. 103 of the Code of 1887; but in another case⁶⁰ it was held that the new married women's act⁶¹ disclosed no ground affecting the view taken in the cases cited. These holdings were believed to be sound, but as it is very difficult to sever the damages in such cases and tell what part should be recovered by the wife and what part by the husband, and as it is the wife who suffers

57. Sec. 5106.

58. Sec. 5113.

59. *Richmond Ry., etc., Co. v. Bowles*, 92 Va. 738; *Atlantic & D. R. Co. v. Ironmonger*, 95 Va. 625.

60. *Norfolk Ry. & Light Co. v. Williar*, 104 Va. 679.

61. Acts 1899-00, p. 1240.

both the physical and mental injury, it was deemed best to give to her the entire damages, and to take away the present right of the husband to bring a separate action for the loss of such services.⁶²

The extent of the power of a married woman over her contingent right of dower is somewhat doubtful under the law now in force.⁶³ The revision seeks to remove all doubt on this subject, and makes it clear that the wife cannot convey her contingent right of dower to any person whomsoever (which of course includes the husband) while the husband owns the real estate in question.⁶⁴

Sec. 2415 of the Code of 1887 on the subject of the right of a person not named as a party, or named jointly with others, to take under or sue on an instrument, was under review in the case of *Newberry v. Newberry*, 95 Va., 119, and it was there held that if the covenant was *inter partes* the beneficiary could not sue unless expressly named or pointed out by the instrument. The revisors therefore amended the section so as to make this unnecessary, but when the beneficial owner sues, the promisor or covenantor is given all defenses he may have against both the promisee or covenantee and the beneficial owner. Furthermore, the section as it stands in the Code of 1887 is restricted to a covenant or promise made for the sole benefit of a person. The revised section is not so restricted, and applies whether the covenant or promise is for the benefit in whole or in part of a person with whom it is not made, etc. There appears to be no good reason for limiting the relief to cases where the promise is for the sole benefit of a person.⁶⁵

Perhaps no statute in Virginia has been the subject of more speculation as to its meaning than the act of 1908 amending Sec. 2418 of the Code of 1887, the primary object of which amendment was to abolish the rule commonly known as the doctrine of *May v. Joynes*. The revisors redrafted the amendment, and have sought to improve its phraseology. Its meaning also has probably been changed. The revised section is expressly restricted to devises and bequests *for life*, with absolute power of disposi-

62. Sec. 5134.

64. Sec. 5135.

63. Acts 1899-00, p. 291.

65. Sec. 5143.

tion. The act of 1908 did not contain the words "for life" and the language was broad enough to apply to a class of limitations which was probably not intended to be affected by the act.⁶⁶

Spendthrift trusts are not valid in Virginia at the present time.⁶⁷ I need not say that strong arguments may be made both for and against these trusts. They have ardent friends and bitter enemies. After weighing the arguments on both sides of the question, the revisors concluded that it would not be detrimental to the public interest, nor a violation of any sound legal principle, to permit these trusts to a limited extent, provided existing creditors of the creator of the trust are protected. The revision therefore enacts that "any such (trust) estate, not exceeding one hundred thousand dollars in actual value, may be holden or possessed in trust upon condition that the corpus thereof and income therefrom, or either of them, shall be applied by the trustee to the support and maintenance of the beneficiaries without being subject to their liabilities or to alienation by them; but no such trust shall operate to the prejudice of any existing creditor of the creator of such trust."⁶⁸

In *Lockhart v. Vandyke*, 97 Va. 356, it was held that the statute abolishing survivorship between joint tenants⁶⁹ had no application where the estate in joint tenancy had not vested, and hence, upon the death of one of two joint devisees in the lifetime of the testator, who subsequently made no change in his will, the whole estate passed to the survivor. The revision changes this holding.⁷⁰

The procedure for enforcing liens and reservations on personal property has been simplified, and a new provision inserted making the right to possession of the property pending the litigation the same as in detinue.⁷¹

As to what constitutes recordation of deeds and other instruments under the present law I need make no remarks, as every lawyer is familiar with the subject. The policy adopted by the revisors was to require *indexing* in every case, so far as I can

66. 1 Minor Real Property, Sec. 858, Sec. 5147.

67. *Hutchinson v. Maxwell*, 100 Va. 169.

68. Sec. 5157.

70. Secs. 5159, 5238.

69. Code 1887, Sec. 2430.

71. Sec. 5190.

now recall, and nothing less than this will operate as constructive notice. Thus the law is made to conform to what has been a rule of necessity in practice, as we have had to depend on the indexing, and it is manifest that no lawyer could make much progress in examining titles if he attempted to do what the present law theoretically requires.⁷²

It had been held in a number of cases that where land was conveyed with general warranty and the grantor did not own it at the time of the conveyance, but subsequently acquired the same land, such acquisition enured to the benefit of the grantee, because the grantor was estopped to deny, against the terms of his warranty, that he had the title in question, but it did not operate actually to transfer the estate subsequently acquired.⁷³ It seemed to the revisors that this situation called for statutory aid, and a new section was inserted providing that "When a deed purports to convey property, real or personal, describing it with reasonable certainty, which the grantor does not own at the time of the execution of the deed, but subsequently acquires, such deed shall, as between the parties thereto, have the same effect, as if the title which he subsequently acquires were vested in him at the time of the execution of such deed, and thereby conveyed."⁷⁴ Observe that this section applies to deeds of both real and personal property, and whether there is a covenant of general warranty or not, and that it is restricted to the *parties to the deed*.

The revision expressly enacts how deeds of corporations are to be executed and acknowledged.⁷⁵ This section, while it may be regarded as an adaptation in part of an Act of Assembly⁷⁶ is substantially new. It was deemed best, instead of validating an irregular method of execution, as was done by the act, to prescribe a proper method by which the deeds may be executed.

Under the law now in force, a deed by husband and wife, in order to pass the interest of the wife, must be admitted to record as to both.⁷⁷ The revision dispenses with the necessity for re-

⁷². Secs. 5194, 5189.

⁷³. *Burtner v. Keran*, 24 Grat., 65; and cases following it.

⁷⁴. Sec. 5202.

⁷⁵. Sec. 5208.

⁷⁶. Acts 1912, p. 273.

⁷⁷. Code 1904, Sec. 2502; *Building, etc., Co. v. Fray*, 96 Va. 559, 32 S. E. 58.

cordation as between the parties, and simply provides that the execution and delivery of the writing is sufficient to convey all interest that the wife may have in the property.⁷⁸ The exact requirement here abolished has served its purpose, if indeed it ever possessed any merit.

Several material changes were made in the sections concerning wills. I shall mention two or three. It had been suggested that the language of Sec. 2514 of the Code of 1887 relating to holographic wills was not altogether clear because the words "wholly written by the testator" were used, which might by possibility mean "wholly written" by him on a typewriter or otherwise than in his own handwriting.⁷⁹ To obviate any question of this sort the words "wholly in the handwriting of the testator" were substituted for the words above quoted.⁸⁰ It had also been suggested that some additional safeguard should be thrown around the proof of holographic wills, and the revision enacts that "If the will be wholly in the handwriting of the testator that fact shall be proved by at least two disinterested witnesses."⁸¹

A commission is now necessary to take a deposition to be read on the probate of a will.⁸² As this is the only case in which a commission is required in this state to take a deposition, no good reason was seen for its retention. A commission, therefore, is unnecessary under the revision.⁸³

Attention is called to the section of the new Code regulating the time and manner of having an issue *devisavit vel non*.⁸⁴ This section is intended to change the rule announced in *Saunders v. Link*, 114 Va. 285, and *Ramsey v. Dodd*, 114 Va. 295, holding that no bill for an issue *devisavit vel non* could be filed if the will was probated before the clerk, and no appeal taken from his order. Under the new Code, if the probate is had before a circuit clerk, an appeal of right from the action of the clerk must be taken, if at all, within one year from the entry of the order by the clerk;⁸⁵ but a bill in equity praying issue *devisavit vel non*

78. Sec. 5211.

79. 2 Va. Law Reg. N. S. 404; 2 Minor on R. P., Sec. 1253.

80. Sec. 5229.

81. 2 Va. Law Reg. N. S. 405; Sec. 5229.

82. Code 1887, Sec. 2537.

84. Sec. 5259.

83. Sec. 5252.

85. Sec. 5249.

may be filed within two years from the date of the order made by the *court*, whether in the exercise of its original jurisdiction or an appeal from the clerk, and if no appeal is taken from the action of the clerk within one year, then the bill may be filed within two years from the date of such order or sentence by the clerk.⁸⁶

Under the former law, upon the death of a married woman intestate, her husband was her sole distributee, but upon the death of the husband intestate, with issue surviving, the wife was only entitled to one-third of his personal estate. By the new statute husband and wife are placed upon the same footing. If there be issue surviving, the husband or wife, as the case may be, gets one-third, and if no issue, the whole. No change was made in the statute of descents.

Sec. 2560 of the Code of 1887 bars the right of the wife to share in the distribution of the husband's personal property in case she leaves him and lives in adultery, unless the husband, after she so left him, was reconciled to her and suffered her to live with him. This section has been enlarged and made applicable to both husband and wife.⁸⁷ There seemed to be no good reason for a double standard of morality.

At common law under no circumstances were guardians allowed any expenditures over and above the income of their wards unless leave of court was first obtained.⁸⁸ This common law rule was modified by the Code of 1887.⁸⁹ The revisors were convinced that the estates of wards should be given more protection than they receive under the present law, and substituted for Sec. 2604 aforesaid a section which is largely new, by which it is provided that "No disbursements shall be allowed to any guardian, where the deed or will under which the estate is derived, does not authorize it, beyond the annual income of the ward's estate, *until the court before which the accounts of the guardian may be settled shall authorize the same*, and such authority shall not be given except where the court shall be satisfied that such expenditure would be judicious and proper." The section then prescribes the procedure necessary to obtain this consent.⁹⁰

⁸⁶. Sec. 5259.

⁸⁷. Sec. 5277.

⁸⁸. 1 Min. 4th Ed., 443; 2 Barton C. Pr., 2nd Ed., 705.

⁸⁹. Sec. 2604.

⁹⁰. Sec. 5321.

A very useful and commendable act was passed in 1908⁹¹ amending a former act⁹² authorizing courts to pay money to infants entitled thereto, or to their parents, in certain cases, without the intervention of a guardian. Under that act, however, it is necessary for a suit to be pending, and the amount is fixed at less than three hundred dollars. The revision broadens the act, makes the pendency of a suit unnecessary, and increases the amount from three hundred to five hundred dollars.⁹³

Under the statutes now in force, in an action of unlawful entry or detainer there is a writ but no declaration, and in an action of ejectment there is a declaration but no writ. This state of the law leads to confusion between the two actions, and it is often difficult to remember which requires the writ but no declaration, and which the declaration but no writ. In order to simplify this, the revisors have provided that in unlawful entry or detainer "A declaration may be filed as in other actions at law, but if the premises be adequately described in the summons no such declaration shall be necessary;"⁹⁴ and in the case of ejectment that "The action may be commenced by the issuance of a writ as in other actions at law, or by the service of a declaration."⁹⁵ These changes permit the practitioner to select his manner of commencing either action.

Several changes were made in the sections pertaining to tenants. I shall mention only one. An under-tenant suffers an injustice under the present law, for his goods on the leased premises are liable to distress for the whole amount of the rent due by the tenant to his lessor, regardless of the state of accounts between the tenant and the under-tenant.⁹⁶ The revision changes this harsh rule, and provides that the goods of the under-tenant shall not be liable to a greater amount than he owed the tenant at the time the distress was levied.⁹⁷

The uniform negotiable instruments act has been in force in Virginia for about twenty years, and has worked well. For mani-

91. Acts 1908, p. 45.

92. Acts 1901-2, p. 812.

94. Sec. 5445.

93. Sec. 5343.

95. Sec. 5456.

96. *Bernard v. McClanahan*, 115 Va. 453.

97. Sec. 5523.

fest reasons the revisors were exceedingly reluctant to make any alterations whatever in this act which, with slight variations, has been adopted in a majority of the states; but after having read and considered some very able discussions of the act by distinguished lawyers, notably several articles by the late Dean Ames of Harvard University, in which he pointed out some of the defects in the law, it seemed to the revisors that a few changes were clearly necessary. These were made and will readily be discovered by comparing the old act with the new.⁹⁸

It had been decided that an action of debt would not lie upon a bond payable in instalments until the whole amount was payable, and that covenant was the proper action for the instalments.⁹⁹ The revision changes this holding and allows an action of debt to be maintained for past due instalments on a bond or note for the payment of money, although other instalments be not due.¹⁰⁰

In the absence of statute, the courts have had difficulty in declaring what the law is on the subject of contribution among wrongdoers, and in order to put this important question at rest, and to enact what seems to be a just, sound and workable rule, a new section was inserted to the effect that contribution among wrongdoers may be enforced where the wrong is a mere act of negligence, and involves no moral turpitude.¹

If a man, having suffered a personal injury, compromises for such injury and accepts full satisfaction therefor, and afterwards dies from the effects of the injury, a question arises as to the right of his personal representative to maintain an action for death by wrongful act, neglect or default. The new Code settles the question by providing that such action cannot be maintained. This is the weight of authority, and is supported by the better reasoning.²

The section now in force ³ relating to the beneficiaries in an

98. Secs. 5615, 5626, 5632, 5647, 5675, 5681.

99. *Peyton v. Harmon*, 22 Gratt. 643.

1. Sec. 5779.

100. Sec. 5759.

2. Sec. 5787; note, 70 Am. St. Rep. 684; *Brammer v. Norfolk & W. R. Co.*, 107 Va. 206.

3. Code 1904, Sec. 2904.

action for death by wrongful act, neglect or default, is not altogether clear, a doubt existing as to the meaning of the provision that if the jury have not directed to whom the recovery is to be paid, then it is to go according to the statute of distributions. Does it mean that the distribution must be confined to the preferred and deferred classes named in the statute, such persons taking according to the statute of distributions, and that as long as any of either class exist, there can be no distribution to any others under the statute of distributions? or does it mean that the statute of distributions is to be applied regardless of whether the distributee can qualify in either the preferred or deferred class of beneficiaries? A circuit court held the latter.⁴ To set the question at rest the revision eliminates the clause bearing on the statute of distributions and enacts that "The verdict of the jury, if there be one, and the judgment of the court shall, in all cases, specify the amount or the proportion to be received by each of the beneficiaries, if any such there be." If the verdict fails to specify the beneficiaries and the amount going to each, the section further provides that such failure shall be corrected by the trial court at any time before judgment is entered, and for this purpose it may hear evidence if deemed necessary. If there be none of the kindred mentioned in the section, then the judgment should specify that the recovery is for the benefit of the estate of the decedent. I wish also to say that the revised section adds grandchildren to the preferred class of beneficiaries. The present section puts them in neither the preferred nor deferred class. This addition was made because the attachment of grandparents for their grandchildren was considered greater than that for collateral kindred. It was not deemed necessary to make any other change in the language of the section as to the beneficiaries. The language used seems plain enough to indicate that there is a preferred class of beneficiaries composed of the surviving wife, husband, child and grandchild, and as long as any of these remain there can be no recovery for the benefit of the deferred class, nor can any of the deferred class be placed in the same class with the preferred class, and if there be none of either class enumerated, then the recovery must be for the benefit of the

4. *Pinchum v. So. Ry. Co.*, 10 Va. Law Reg. 62.

decedent's estate. It cannot be for the benefit of any other collateral kindred.⁵

In most states replevin is used where in Virginia we use the action of detinue, but, as is well known, replevin has long been abolished in Virginia.⁶ The present statute on detinue has been criticized and the preference claimed for replevin because under the Virginia statute the plaintiff can only recover possession of his property at the end of the litigation, whereas in replevin he recovers possession at the beginning. Even under the present language of the section, however, in practice the officer in many cases takes the property, and instead of retaining it, turns it over to the plaintiff. The revision removes the criticism just referred to, and under it the officer is commanded to "seize the property mentioned in such affidavit and deliver the same to the plaintiff, upon his giving proper bond," so that the plaintiff may, in all proper cases, regardless of the present practice, recover possession of the property at the beginning of the litigation.⁷

Sec. 2932 of the Code of 1887 provides that if a person die before the time at which any right mentioned in the chapter concerning the statutes of limitations would have accrued to him, if he had continued alive, and there be an interval of more than five years between the death of such person and the qualification of his personal representative, such personal representative shall, for the purposes of the chapter, be deemed to have qualified on the last day of the said five years. The period of five years here mentioned has been reduced to two years, as this was thought sufficient.⁸

In mandamus and prohibition proceedings, provision is made for amendments to the petition, should a demurrer thereto be sustained.⁹

The commencement and number of the regular terms of the circuit courts has been a subject of frequent legislation in order to meet the changing conditions in the various circuits. This legislation has been for the purpose of changing the time for the commencement of the terms as well as for the purpose of chang-

5. Sec. 5788.

6. Sec. 5784.

7. Sec. 5797.

8. Sec. 5824.

9. Sec. 5834.

ing the number of the terms. The revision provides that the number of terms and the days for their commencement shall be as fixed by law at the time the Code takes effect, but it gives the judges power, in their discretion, to change the *days for the commencement of the term*—not the number.¹⁰ This power given to judges of circuit courts conforms to the like power given to judges of corporation courts.¹¹ In order that the public may be informed of the days for the commencement of the terms, the section provides that whenever a judge changes the days for the commencement of the terms of any court, the clerk of the court shall, within thirty days thereafter, send a copy of the order making the change to the Clerk of the House of Delegates, and the latter officer is required¹² to publish with the acts of assembly of each session a table showing the time for the commencement of the regular terms of all courts of record.

Under the act now in force¹³ governing the jurisdiction of justices in civil cases, if the amount or thing in controversy exceeds the sum or value of twenty dollars, upon application of the defendant, and upon affidavit that he has a substantial defense thereto, the justice is required to move the case to the circuit court. The new section¹⁴ increases the value to fifty dollars, but no affidavit of a substantial defense is required. The increase was made to relieve the courts of record of the burden of having to decide these small controversies in the first instance. Appeals, however, may be taken as at present.¹⁵ The affidavit was dispensed with because under the present law it is said that such affidavits are often made, and when cases are called in court, no defenses whatever are set up. Furthermore, at present it is provided that the removed case shall not be tried at any term except by consent of the parties, unless it shall have been docketed ten days previous thereto. This requirement is omitted, and under the revision the trial may be had when the case is reached on the docket, unless a postponement or continuance be granted as in other cases.¹⁶

10. Sec. 5893.

11. Sec. 5909.

12. Sec. 306.

13. Acts 1916, p. 758.

14. Sec. 6017.

15. Sec. 6027.

16. Sec. 6017.

There is doubt and uncertainty as to how process against or notice to married women may be served. One *nisi prius* court has held that substituted service on a married woman is not valid, and another, that such service is valid.¹⁷ The revision settles the question and puts married women and married men on the same footing as to substituted service.¹⁸ The question has also arisen as to who is "a member of the family" within the meaning of the statute. This question is put at rest to the extent of declaring that a temporary sojourner or guest shall not be deemed to be a member of the family of the person on whom the process is sought to be served.¹⁹ As to the service of process or notice by a private person, which is authorized by the present law, the revisors thought it wise to insert a new provision to the effect that such private person must not be a party to or otherwise interested in the subject-matter in controversy.²⁰ There is a restriction of this kind in the present section pertaining to non-residents²¹ but none as to residents.²²

In *Park L. & I. Co. v. Lane*, 106 Va. 304, it was held that service of process on a wife was not sufficient where the return did not show that the purport of it had been explained to her, although the husband received the summons in ample time to have defended the action; and in *King & Co. v. Hancock*, 114 Va. 596, that notice by mail to take depositions was not sufficient although received by the party in ample time to have attended the taking. These two holdings were believed to be correct under the statute as it then stood, but the revisors were of opinion that the law should be otherwise. The section was therefore amended so as to provide that "A notice in writing, however, which has reached its destination within the time prescribed by law, if any, shall be sufficient, although not served in the manner above mentioned."²³

In a suit for divorce from the bond of matrimony, an order of publication may now be obtained against a defendant under sentence to confinement in the penitentiary.²⁴ The new section pro-

17. 1 Va. Law Reg. (N. S.), 787; 2 Va. Law Reg. (N. S.), 338, 481.

18. Sec. 6041.

21. Acts 1906, p. 47.

19. Sec. 6041.

22. Code 1904, Sec. 3207.

20. Sec. 6041.

23. Secs. 6041, 6228.

24. Code 1887, Sec. 3230.

vides for service on the Superintendent of the Penitentiary ten days before action is to be taken and for immediate delivery by him to the convict.²⁵

Sec. 3211 of the Code of 1887, as variously amended, giving a remedy by motion after fifteen days' notice, has, under the broad scope given it under the more recent amendments, increased in favor and popularity with some members of the bar. This proceeding by motion is code pleading, pure and simple, and I am reminded of the fact that an effort has been made by some of the profession for years to abolish the common law system of pleading, as modified by statute, and to substitute therefor a system of code pleading. The subject was not pressed before the revisors, and their own experience at the bar and their observation of the working of the code procedure in other states, did not lead them to think that such a change is needed or is desirable at present. Existing statutes (see Code 1887, secs. 3245, 3246, 3249, 3253, 3258, 3258a, 3263, 3264, 3272 and 3384, and amendments thereof) when properly interpreted, are sufficient to insure a trial on the merits of the case whenever the pleadings set forth sufficient matter of substance for the court to give judgment "according to law and the very right of the cause;" but, out of deference to the views of others, the revisors, while retaining the old mode of procedure, have so enlarged the informal proceeding by motion as to provide that "Any person entitled to maintain an action at law may, in lieu of such action at law, proceed by motion before any court which would have jurisdiction of such action," etc., thus extending the motion to all cases where an action at law of any kind would lie.²⁶ The revisors also inserted a new section declaring that whenever an action at law had been brought where the proceeding should have been in equity, or *vice versa*, the action should not be dismissed for that cause, but be remanded to the proper forum and the pleadings so amended as to conform to the proper mode of procedure.²⁷ These two changes, it was thought, would give the advocates of code procedure full opportunity to develop the merits of the system, and if they proved to be more satisfactory

25. Sec. 6042.

26. Sec. 6046.

27. Sec. 6084.

than the present system the transition would be much easier than by a complete substitution of one for the other at the present time.

Section 3215 of the Code of 1887 provides that "An action may be brought in any county or corporation where the cause of action, or any part thereof, arose, although none of the defendants reside therein." This language seems to restrict the section to actions. The revised section expressly applies to both actions at law and suits in equity.²⁸

Section 3220 of the Code of 1887 enacts that all process shall be returnable to the court on the first day of the term, or in the clerk's office to the first day of any rules. As no good reason was seen for requiring process to be returnable to the first day of the term, the new Code provides that it may be returnable to *some day* of the term of a court, or in the clerk's office to the first day of any rules.²⁹

It had been held in *Kain v. Ashworth*, 119 Va. 605, that if the only ground of venue was that the cause of action, or some part thereof arose in the county, the process could not be sent out of the county if the plaintiff proceeded by a regular common-law action, but that it could be if he proceeded by a motion for a judgment under section 3211 of the Code (1904). The new section changes the law as thus announced and declares that it shall not be sent out in either case.³⁰

As to suits by or against unincorporated associations or orders, a new section has been inserted to the effect that such associations or orders may sue and be sued under the name by which they are commonly known and called, or under which they do business. The effect of judgments and executions against them is defined and the manner of serving process prescribed.³¹

The present law pertaining to the service of process on corporations, both domestic and foreign, is complicated, and has not worked satisfactorily. The revision seeks to simplify and expedite the service, and at the same time fully to meet the constitutional requirements as to due process of law. I should like to explain just what was done by the revisors with this trouble-

28. Sec. 6050.

29. Sec. 6055.

30. Sec. 6056.

31. Sec. 6058.

some subject, as the importance of it cannot be overestimated, but as a discussion to be of any value would require a statement of so many details, I must content myself simply by referring to the sections of the new Code showing the action of the revisors.³² The revisors' notes in the annotated edition will of course explain the changes fully and give reasons for them. I may mention, however, in passing, that, while the usual provision for service of process on officers and agents of domestic corporations is retained, it is further provided that whether an agent be found in the county or corporation, or not, on whom service can be made, the process "may be sent to the county or city in which is located the principal office of such company and be there served on any officer or agent of such company found at such office."³³ The former provision for an order of publication has been omitted and thereby repealed. As to foreign corporations, the service is to be primarily on the statutory agent, if none, then "On any other agent of such corporation in the county or city in which he resides, or in which his place of business is,"³⁴ and if none, then by order of publication.

Different forms of orders of publication are now prescribed in cases against individuals and corporations. The revision provides for a uniform order of publication in all cases in which an order of publication is desired. Affidavits for such orders are required to state the last known post-office address of the defendant, or, if not known, the affidavit must state that fact; and the clerk is directed, in addition to the publication, to mail a copy to each of the defendants to the post-office address given in the affidavit. The revision also reduces the time for appearance from fifteen days to ten days after due publication.³⁵

In the absence of statute, conflicting views are entertained on the subject of when title passes in trover. A new section declares that judgment in trover shall not operate to transfer title unless and until the judgment has been satisfied.³⁶

Some years ago an act was passed declaring that "In any case in which an action of covenant will lie there may be maintained

32. Secs. 6063, 6064, 6065, and the sections of Chaps. 252 and 253.

33. Sec. 6063.

35. Secs. 6069, 6070.

34. Sec. 6064.

36. Sec. 6087.

an action of assumpsit.”³⁷ This act presents the question (until now unsettled) as to what should be the general issue in the action of assumpsit on a sealed instrument, and the revision settles it by enacting that the general issue in such a case shall be *non est factum*, thus assimilating the pleading in assumpsit to the pleading in debt, and preserving one of the distinguishing features of a sealed instrument.³⁸

In 1916³⁹ an act was passed requiring contributory negligence, when relied on as a defense, to be set forth in a bill of particulars. This act is applicable to tort actions for personal injuries only, and requires the particulars of the contributory negligence to be set forth *upon motion of the plaintiff*. As codified, the section is made to apply to all tort actions, whether the injury be to person or property or occasioning the death of a person; and further provides that if the defendant intends to rely upon contributory negligence of the plaintiff, he shall so state in writing before the trial begins, hence no motion is necessary, as is true under the act referred to. If the plaintiff's testimony discloses contributory negligence, of course the defendant is not precluded from relying upon that, although he does not file a bill of particulars.⁴⁰

Under the law now in force, no plea in abatement may be received after the defendant has demurred, pleaded in bar, or answered to the declaration or bill, “nor after a decree nisi or conditional judgment at rules.”⁴¹ A defendant, however, by appearing and not pleading is given a rule to plead, which prevents a conditional judgment being entered against him and enables him to obtain until the next rules in which to file his dilatory pleas. This appearance at the rules without pleading merely to get this additional time was thought by the revisors to be a useless formality, hence they substituted for the words “nor after a decree nisi or conditional judgment at rules,” the following “nor after the second rules subsequent to service of process on such defendant.” This change gives the defendant a reasonable time in which to prepare his dilatory pleas, and the necessity for the entering of an appearance is dispensed with.⁴²

37. Acts 1897-8, p. 103.

38. Sec. 6088.

39. Acts 1916, p. 506.

40. Sec. 6092.

41. Code 1904, Sec. 3260.

42. Sec. 6105.

Under the decisions of the Supreme Court of Appeals a declaration containing general averments of negligence is bad on demurrer; greater particularity being required.⁴³ Manifestly, the particulars of the negligence should be stated in the declaration, as it is information to which the defendant is clearly entitled; but it occurred to the revisors that it would expedite matters and be in the interest of substantial justice to provide that a demurrer shall not be sustained to a declaration because the particulars of the negligence are not stated, but that the particulars may be demanded by the defendant under the section concerning bills of particulars generally.⁴⁴

Several important and material changes, suggested in the main by the new Federal Equity Rules, were made in equity practice. The general object of the changes is to "speed the cause." Time prevents my pointing them out specifically, and I shall simply refer to the sections containing them.⁴⁵ Perhaps I should call attention to the fact that answers in chancery are required to be filed within six months from service of process and that severe penalties are imposed for not complying with the requirement.

Where a bill, declaration, or other pleading alleges that any person or corporation, at a stated time, owned, operated, or controlled any property or instrumentality, no proof of the fact alleged is required under the revision unless an affidavit be filed with the pleading putting it in issue, denying specifically and with particularity that such property or instrumentality was, at the time alleged, so owned, operated, or controlled.⁴⁶ This is a new section and is highly remedial.

As to the manner of pleading set-offs, under the present statute⁴⁷ it appears necessary for the defendant to file a plea of some kind with his account of set-offs, but the practice is generally otherwise. The revised section conforms to the practice, and permits the account to be filed with the papers in the cause.⁴⁸

43. *Hortenstein v. Va.-Car. Ry. Co.*, 102 Va. 914; *Norfolk & W. R. Co. v. Gee*, 104 Va. 806.

44. Sec. 6118.

45. Secs. 6122, 6123, 6138.

46. Sec. 6126.

47. Code 1887, Sec. 3298.

48. Sec. 6144.

Whether or not counter-set-offs are allowable under the present law has not been decided, so far as I am informed, but apparently the right is recognized in one case.⁴⁹ The revision expressly gives the right.⁵⁰

The effect of the marriage of a female plaintiff or defendant is clearly defined by the new Code.⁵¹ The present law on this subject is rather obscure.

The maximum number of commissioners in chancery that the courts and judges are now authorized to appoint is prescribed by statute,⁵² and heretofore it has been necessary to ask for an act of Assembly when an increase in the number was desired in order to take care of the business of the courts. The revision avoids the delay, inconvenience and expense incident to this state of affairs, and confers general authority on the courts and judges to appoint as many of such officers as they consider necessary for the convenient dispatch of business.⁵³

At present a commissioner need not return with his report the evidence on which it is based, unless so directed.⁵⁴ This rule has been changed so as to require the evidence to be returned in all cases, and special direction is unnecessary. This will obviate the statement now so often necessary in the appellate court that the court does not know upon what evidence the commissioner acted.⁵⁵ As to the weight of the report, a new provision was inserted declaring that "the report shall not have the weight given to the verdict of a jury on conflicting evidence but the court shall confirm or reject such report, in whole or in part, according to the view which it entertains of the law and the evidence."⁵⁶

The most radical change made by the revisors is that relating to the competency of witnesses. I have heretofore stated that the general policy adopted in the revision was to remove, as far as possible, all disqualifications of witnesses, and have referred

49. *Sexton v. Aultman*, 92 Va. 20.

50. Sec. 6144.

52. Acts 1912, p. 639.

51. Sec. 6166.

53. Sec. 6178.

54. *Bowden v. Parrish*, 86 Va. 69; *Saunders v. Prunty*, 89 Va. 921; *Maddock's Adm'r. v. Skinker*, 93 Va. 479.

55. Sec. 6185.

56. Sec. 6179.

to the removal of the disqualification of conviction of felony, and of perjury and of subornation of perjury. The subject of the competency of witnesses to testify was one that received very careful consideration by the revisors, and when they came to the section of the civil code on this subject, they eliminated all exceptions to the rule that interest shall not disqualify a witness, as nearly all of the difficulties that have arisen in civil practice have grown out of these exceptions. The principal exception and one which has been most fruitful of litigation is that pertaining to the survivor of the transaction. Most of the states still retain this exception, but in at least two of them, New Mexico and Connecticut, it has been abolished. The objections to the principle of the survivor of a transaction rule may be found well and ably discussed by Mr. Wigmore, a distinguished authority, in his work on evidence.⁵⁷ The objections to the rule in actual operation are best illustrated by the numerous cases which have arisen under the law, some of which have been of such character as to call for amendment of the sections by which they were governed. In order to meet the difficulties that may arise in consequence of a repeal of the exceptions, the revisors have added a new section declaring: "In an action or suit by or against a person who, from any cause, is incapable of testifying, or by or against the committee, trustee, executor, administrator, heir, or other representative of the person so incapable of testifying, *no judgment or decree shall be rendered in favor of an adverse or interested party founded on his uncorroborated testimony*: and in any such action or suit, if such adverse party testifies, all entries, memoranda, and declarations by the party so incapable of testifying made while he was capable, relevant to the matter in issue, may be received as evidence."⁵⁸ It seemed to the revisors that this section, together with the great safeguard of cross-examination, would be ample protection for the estates of persons laboring under disability, or who are incapable of testifying. In the business affairs of life all evidence bearing upon the question at issue is received and considered by the business world, and it seemed proper that the same rule should obtain in courts of justice which are enforcing rights

57. 1 Wig. Ev., Sec. 578.

58. Sec. 6209.

arising out of such business transactions. Let me add that care has been taken to protect confidential communications between husband and wife.⁵⁹ The action of the revisors with reference to the competency of husband and wife as witnesses in divorce cases has been mentioned in an earlier part of this address.

A new section, of considerable importance, relating to the entry of final judgment after a verdict has been set aside, was inserted by the revisors, and I shall give it in full: "When the verdict of a jury in a civil action is set aside by a trial court upon the ground that it is contrary to the evidence, or without evidence to support it, a new trial shall not be granted if there is sufficient evidence before the court to enable it to decide the case upon its merits, but such final judgment shall be entered as to the court shall seem proper. If necessary to assess damages, which have not been assessed, the court may empanel a jury at its bar to make such assessment, and then enter such final judgment. Nothing in this section contained shall be construed to give to trial courts any greater power over verdicts than they now have under existing rules of procedure, nor to impair the right to move for a new trial on the ground of after-discovered evidence."⁶⁰ The section is intended to apply to all civil actions and, of course, to proceedings by motion,⁶¹ as these have been held to be actions. The object is to end the action at once and put the losing party to his writ of error, thus avoiding the temptation to perjury and in many cases the unnecessary expense of a second trial. The further effect of the section is that it will probably be used as a substitute for a demurrer to the evidence. Instead of demurring to the evidence, the trial will proceed to verdict, and the losing party may move to set aside the verdict because contrary to the evidence or without evidence to support it; and if the court sustains the motion, it will enter judgment accordingly, and the party in whose favor the verdict was rendered will then apply for a writ of error. The verdict is not robbed of any of the weight now given to the verdict of a jury, but the judgment of the appellate court, instead of remanding the case for a new trial, will be a final judgment, just

59. Secs. 6210, 6211, 6212.

60. Sec. 6251.

61. Sec. 6046.

as it is under the present law on a demurrer to the evidence. The advantage of getting rid of the additional trial seems to be manifest.

Sec. 3385 of the Code of 1887, on the subject of bills of exceptions, was last amended by an act approved March 21, 1916.⁶² The General Assembly at the same session also passed an act abolishing bills of exception and prescribing certificates of exceptions in lieu thereof.⁶³ These acts were approved on the same day. The first named act contained an emergency clause; the other contained no such clause. In *Ellis v. Town of Covington*, 94 S. E. 154, 15 Va. App. 16, it was held that "The emergency act was operative at once, and continued in force during the interval between its passage and the time at which the act abolishing bills of exceptions took effect, when it was immediately repealed." But the court further held that "The act abolishing bills of exception, now in force, was intended, however, to simplify the procedure, and is very liberal in its provisions as to what shall constitute a sufficient certificate. * * *. The mere form of the exception, therefore, even a formal bill of exception under the former practice, will not prevent its consideration if the provisions of the act are substantially complied with." The new Code re-instates the formal bill of exception⁶⁴ and contains also in the main the substance of the act of 1916 on the subject of the certificate.⁶⁵ The former is re-instated for the benefit of those practitioners who prefer not to depart from the practice to which they are accustomed; the latter is preserved for the benefit of those who prefer that method. Whether one form or the other is adopted, the statute fixes a definite time within which the bill or certificate must be signed. The utmost limit is sixty days from the date of the final judgment. It was deemed best to eliminate all agreements of counsel for any specific time, as such agreements often lead to difficulties. It is believed that, by giving the practitioner his election between the two methods, and by making the time for signing *fixed*, certain and definite, and the same in both methods, which is done by the new sections, the saving of points made in the trial courts has

62. Acts 1916, p. 722.

64. Sec. 6252.

63. Acts 1916, p. 708.

65. Sec. 6253.

been made as simple and as safe from the probability of fatal defects as could be reasonably desired.

Sec. 3392 of the Code of 1887 enacts, among other things, that "Not more than two new trials shall be granted to the same party in the same cause." This language is very doubtful of construction. The questions arising under it are discussed in a recent case.⁶⁶ To put the matter at rest the revisors made an addition to the sentence above quoted, as follows: "on the ground that the verdict is contrary to the evidence, either by the trial court or the appellate court, or both" ⁶⁷

It had been held in *Petticolas v. City of Richmond*, 95 Va. 456, that a judgment against one of several wrongdoers, with or without satisfaction, was a bar to any action against the others. This case follows the English rule, and is in accord with an earlier Virginia decision. It is believed, however, that the great weight of authority in the United States is otherwise, and a new section has been adopted by the revisors declaring that an unsatisfied judgment against one should not bar recovery against the other, as they were of opinion that the bar should not fall until there has been a satisfaction for the wrong done.⁶⁸

Under the statutes now in force, this anomaly exists in Virginia; Under Sec. 3212 of the Code of 1887 ⁶⁹ the plaintiff can proceed by motion against any one or any intermediate number of joint contractors, and even the personal representative of one bound on a joint contract. This cannot be done in an ordinary action. Again, under Sec. 2853 ⁷⁰ the plaintiff can proceed against all, any one, or any intermediate number of persons jointly bound on negotiable instruments, which could not be done except by the statute allowing it. Sec. 3396 of the Code of 1887 is limited to actions against two or more defendants where the process has been served on part of them, in which case the plaintiff may proceed to judgment as to any so served, and either discontinue as to the others, or from time to time as the process is served on the others, proceed to judgment as to them until judgments are obtained against all. No good reason is seen for

⁶⁶. *Spriggs v. Jamerson*, 115 Va. 250.

⁶⁷. Sec. 6260.

⁶⁹. See Sec. 6047.

⁶⁸. Sec. 6264.

⁷⁰. See Sec. 5760.

allowing a different method of procedure on negotiable paper from that allowed on common law paper, nor for allowing a different procedure by motion from that allowed by action, hence the revisors have provided that, "Upon all contracts hereafter made by more than one person, whether joint only or joint and several, an action or motion may be maintained and judgment rendered against all liable thereon, or any one or any intermediate number," etc.⁷¹ It will be observed that this revision is restricted to future contracts. This was done because it was thought that otherwise constitutional difficulties might be encountered.

The vacation powers of chancery judges are greatly increased by the revision. It was thought that these powers should be enlarged to such an extent as to obviate the necessity of from time to time amending the statute so as to confer additional powers, which has been the case heretofore. The new section is intended to do this, and at the same time amply protect all parties in interest. It is intended simply to confer jurisdiction, however, and not to compel its exercise.⁷²

A substantial change was made in the statute of jeofails. Under the revision it seems almost impossible for a case to be reversed on any mere technicality. Judgments are allowed to stand when fairly rendered on the merits, if substantial justice has been reached.⁷³

When a case at law, civil or criminal, is tried by a jury, and a party excepts to the judgment or action of the court in granting or refusing to grant a new trial on a motion to set aside the verdict of a jury on the ground that it is contrary to the evidence; or when a case at law is decided by a court or judge without the intervention of a jury, and a party excepts to the decision on the ground that it is contrary to the evidence, and the evidence (not the facts) is certified, the present rule of decision in the appellate court in considering the evidence in the case is as on a demurrer to the evidence by the appellant. When there have been two trials in the lower court, however, the appellate court looks first to the evidence and proceedings on the first trial, but

71. Sec. 6265.

72. Sec. 6307.

73. Sec. 6331.

not as on a demurrer to the evidence,⁷⁴ and if it discovers that the court erred in setting aside the verdict on that trial, it sets aside and annuls all proceedings subsequent to said verdict and enters judgment thereon.⁷⁵ The revision abolishes the rule of decision as on a demurrer to the evidence, and substitutes therefor a much simpler rule by enacting that "The judgment of the trial court shall not be set aside unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it."⁷⁶ You will recall that I have already referred to a new section ⁷⁷ under which if a verdict is set aside by the trial court because contrary to the evidence, or without evidence to support it, no new trial is ordered, but final judgment is entered by the trial court. There is no necessity, therefore, for retaining the provision in the present section about two trials in the lower court where the verdict has been set aside, and it was stricken out.⁷⁸ I wish to add, however, that the new section just referred to ⁷⁹ is applicable to *civil cases only*, and that Sec. 6363 expressly applies to civil and criminal cases. So far as Sec. 6363 changes the law in criminal cases it is very limited in its operation. In the ordinary criminal case the trial court would have no power to grant a new trial at the instance of the Commonwealth, except in the case of a law relating to the State revenue. Sec. 8 of the Constitution provides that no man shall "be put twice in jeopardy for the same offense, but an appeal may be allowed to the Commonwealth in all prosecutions for the violation of a law relating to the State revenue." In matters affecting the State revenue, there may be more than one trial in the trial court. In such cases, as a writ of error would lie only to the final judgment of the trial court, the appellate court could consider only the evidence introduced on that trial, and would not set aside the verdict or judgment on that trial unless it was "plainly wrong or without evidence to support it." Attention is called to this so that counsel in the few cases of this nature will

⁷⁴ *Humphrey v. Valley R. Co.*, 100 Va. 749; *Citizens' Bank v. Taylor*, 104 Va. 164.

⁷⁵ Code 1904, Sec. 3484.

⁷⁸ Sec. 6363.

⁷⁶ Sec. 6363.

⁷⁹ Sec. 6251.

⁷⁷ Sec. 6251.

observe that they must not fail on the second trial to introduce the evidence of their defense just as had been done on the first trial. There will be so few cases of this kind that it was not deemed necessary to make special provision for them.

The appellate court, at the present time, in reversing a case, is required to enter such judgment, decree or order "as the court whose error is sought to be corrected ought to have entered."⁸⁰ The new Code changes this very materially and provides that the court shall enter such judgment, decree, or order "as to the court shall seem right and proper, and shall render final judgment upon the merits whenever, in the opinion of the court, the facts before it are such as to enable the court to attain the ends of justice." It is further provided that "A civil case shall not be remanded for a trial *de novo* except where the ends of justice require it, but the appellate court shall, in the order remanding the case, if it be remanded, designate upon what questions or points a new trial is to be had."⁸¹ The object of these changes is apparent, namely, to extend the power of the appellate court over the cases before it, and to enable the court to end the litigation as far as practicable consistent with the demands of justice. From what has been said throughout this address, I need hardly remark that the revisors favored the policy of giving the litigant in every case one fair trial on the merits of his case, but only one. Appeals are allowed, of course, substantially as heretofore, but with the changes in the statutes concerning the appellate court which I have just mentioned, that court is enabled either to end the litigation, or if a case has to be remanded, to point out exactly what questions are to be further litigated. By way of illustration I may say that if a case in which proper damages have been assessed has to be reversed on other grounds, the damages will not have to be re-assessed, but the appellate court will simply remand the case for a new trial on the necessary points. Again, if a case has to be reversed because the damages are excessive or too small, the question of liability will not have to be further litigated, but there will simply have to be a re-assessment of the damages.

80. Code 1904, Sec. 3485.

81. Sec. 6365.

When the revisors came to consider the chapter on attachments, they found that the present procedure to obtain an attachment is too complicated. In some instances it is an original proceeding, but in most cases merely ancillary. Sometimes the proceeding is at law only, sometimes in equity only. In most cases the jurisdiction at law and in equity is concurrent. Sometimes the proceeding is inaugurated before a justice or clerk, sometimes before a justice only. The revisors deemed it best to make the procedure original in all cases, and to simplify it as much as possible. The procedure now adopted consists of a simple petition to be filed before a justice, or a clerk. The pleadings are of the simplest kind, consisting of a petition by the plaintiff and a demurrer by the defendant or a statement of his grounds of defense. Garnishees or persons having possession of the property which is sought to be attached are also to be made defendants. Their grounds of defense having been stated in writing, no replication is required. In the main, the substantive law on the subject is left untouched. One additional ground of attachment, however, has been added: Where the defendant has absconded or is about to abscond from the State, or has concealed himself therein to the injury of his creditors, or is a fugitive from justice. There are cases like the Allen cases a few years ago in which creditors ought to be entitled to attachments but for which no provision is made. It was thought that this ground should be added. Provision is also made for taking personal judgment against the defendant where he has been served with process, although the attachment itself may be abated.

One of the prolific sources of trouble in attachment proceedings has been the sufficiency of the form of the affidavit. This has been practically eliminated by the new act. The petition must set forth the cause of action and the ground of the attachment, and must be sworn to by the plaintiff or his agent, or some person cognizant of the facts therein stated.”⁸² The affidavit is simply to the truth of the petition. If that sets forth a good cause of action and any ground of attachment, and its correctness is sworn to that is all that is necessary. Suitable provision has also been made for amendments which are conducive to the

82. Sec. 6383.

attainment of the ends of substantial justice.⁸³ There are a number of other changes, chiefly in procedure, which cannot be here mentioned.

The chapter on mechanics' liens was carefully revised, and some material changes were made. In order to perfect a mechanics' lien, the former statute⁸⁴ required an itemized account to be filed, giving certain information. This sometimes involved the recordation of a long account, covering many pages, and gave information of no special value to anyone except the owner of the building, and even as to him it is now unnecessary as the claimant is required to file an itemized account with his bill to enforce the lien.⁸⁵ It was thought that the procedure should be made as simple as possible, so as to enable the mechanic himself, or the supply man, to docket his lien, without assistance. According, the new Statute substitutes a mere memorandum, stating the amount and consideration of the claim, and giving other needful information, and gives the form of the lien.⁸⁶

The new Code also eliminated the personal liability feature. This was done by the omission and repeal of Secs. 2479 and 2480 of the Code of 1887, as amended, dealing with that subject. So long as the personal liability of the owner is retained in the chapter, it is practically impossible to administer the mechanics' lien law in such a way as will give information to everybody of the state of the liens, and not do injustice to someone. In practice this feature has caused much confusion, and, in some cases, injustice. If any person desires to secure the personal liability of the owner, it should be a matter of contract, and there is no necessity for injecting it into the mechanics' lien law. The personal liability feature is chiefly desired by material men who are unwilling to trust contractors or sub-contractors, and are at the same time unwilling to refuse them credit for fear it may affect their business. This should properly be a matter of contract, and the owner ought not to have to bear the *onus* of responsibility of contractors or sub-contractors whom materialmen are unwilling to credit.⁸⁷

83. Sec. 6409.

84. Sec. 2476.

85. Sec. 6437.

86. Secs. 6427-8-9.

87. Chap. 270.

The revision makes several important changes with reference to the docketing of a *lis pendens*. These may be readily discovered by comparing the new sections,⁸⁸ with the old.⁸⁹

Judgments may be kept alive perpetually, and at the present time may be enforced against lands in the hands of grantees for value from the judgment debtor, and those claiming under them, any number of years after the conveyance, provided, of course, the judgments have not been allowed to die. It seemed to the revisors that where land has been aliened by a judgment debtor, the judgment creditor should not have an unlimited time within which to enforce his judgment, but that he should be required to proceed to do so within a reasonable time. The limitation in such cases was therefore fixed at ten years from the due recordation of the deed from the judgment debtor to his grantee, and the limitation is made to apply as well to judgments in favor of the Commonwealth as to other judgments.⁹⁰

As the law was when *Whitten v. Saunders*, 75 Va. 563, was decided, voluntary alienees from a judgment debtor stood on the same footing as alienees for value when a judgment creditor sought to enforce his judgment against the land, but the revisors of 1887 changed the law so as to provide that "as among alienees for value and volunteers, the lands aliened to the latter shall be subjected before the lands aliened to the former are resorted to."⁹¹ This language seemed to indicate that an alienee for value of a volunteer would stand in the shoes of the volunteer and his land be subjected before that of the alienee for value from the judgment debtor. The present revisors were of opinion that this should not be true, and that alienees for value ought to cover alienees from the volunteer as well as alienees from the judgment debtor. Hence the section was further modified.⁹²

A new section, on the subject of the liability to levy and sale under an execution of tangible personal property subject to a prior lien or in which the execution debtor has only an equitable interest, was inserted. This was done to settle some trouble-

88. Code 1919, Secs. 5186, 6469.

89. Code 1904, Secs. 2460, 3566.

90. Sec. 6474.

91. Code 1887, Sec. 3575.

92. Sec. 6476.

some questions which had arisen.⁹³ Such property is made liable to levy and sale, and the manner of the application of the proceeds, both in cases where the lien is due and payable and in those where it is not, prescribed.⁹⁴

Under Sec. 3587 of the Code of 1887, an execution may be levied on tangible personal property *on or before* the return day, and the lien is not lost unless the levy is not made within that time, but under Sec. 3601 of the Code of 1887, relating to intangible personal property, the lien does not attach to property acquired *on the return day*, but is limited to property acquired *before the return day*. This being rather confusing, it seemed to the revisors that the lien on both classes of property should attach *on or before* the return day of the writ. This was done.⁹⁵

It had been held in one case⁹⁶ that tangible personal property in the hands of a receiver could not be levied on, but that a writ of *fiery facias* created a lien thereon under Sec. 3601 of the Code of 1887. The opinion of the court in that case, while unanimous, yet seems not to have met with the approval of the profession; the general view being that the section referred to *intangible* property and not to *inaccessible* property. The revisors approved this general view, and it has been made statutory.⁹⁷

As to territorial extent of the lien of an execution, the revision contains a new section, which, however, is believed to be simply declaratory of the existing law.⁹⁸ As to tangible personal property it is limited to the bailiwick of the officer holding the execution, but as to intangible personal property it extends throughout the limits of the Commonwealth.

Under the statute now in force⁹⁹ the real estate set apart by a householder as his exemption cannot be mortgaged, encumbered or aliened by him, if a married man, except by the joint deed of himself and wife, his sole deed being void,¹⁰⁰ but he is allowed, without the consent of his wife, to mortgage or en-

93. See *Claytor v. Anthony*, 6 Rand. 285; *Coutts v. Walker*, 2 Leigh, 268; *Spence v. Repass*, 94 Va. 716, and discussions in *Burks' Pl. & Pr.* pp. 642-644, where other authorities are cited.

94. Sec. 6486.

97. Sec. 6501.

95. Sec. 6501.

98. Sec. 6517.

96. *Davis v. Bonney*, 89 Va. 755. 99. Code 1887, Sec. 3634.

100. *Va.-Tenn. Co. v. McClelland*, 98 Va. 424.

cumber it for the purchase money, or for the erection or repair of buildings. The statute further provides that the real estate may be sold and conveyed by the joint act of the householder and his wife, or by the householder alone, if unmarried, and the proceeds invested in or exchanged for other property. Notwithstanding the provisions of this section, under another section¹ a householder may waive the exemption by his sole note, bond or other instrument, even by a simple due bill, and it is immaterial whether the property has been previously set apart or not. This being true, it appears unreasonable to say that the waiver cannot be by deed, and that the very fact of giving a deed does not constitute a waiver; hence the revision enacts that "Real estate set apart as aforesaid may be sold and conveyed as other real estate held by the householder, and the proceeds invested in other property, or it may in like manner be exchanged for other property, but in no case shall the purchaser be bound to see to the application of the purchase money."² Of course, the householder cannot by his sole deed deprive his wife of dower.

If a widow receives dower or jointure she is not entitled to take advantage of the real estate exemption given her by Secs. 3635 and 3636 of the Code (1904); but in such case the rights of minor children are preserved. If the exemption be in personal estate, however, there is no such qualification.³ The revisors were of opinion that much the same restriction should be put upon the personal estate exemption as is put upon the real estate, hence it is provided that if the widow receives dower or jointure, the value thereof shall be deducted from any exemption she may claim in the personal estate of her husband, but that in this case, as in the other, the rights of minor children shall not be impaired.⁴

If a debt which is superior to the homestead, or as to which the homestead is waived, be paid off by a surety therein, at present it is probable that the principal may claim the homestead as against the surety. This seems unjust to the surety, and in such case, under the revision, the principal is not allowed to claim the homestead against him.⁵

1. Code 1887, Sec. 3647.

4. Sec. 6541.

2. Sec. 6535.

5. Sec. 6548.

3. Code 1887, Sec. 3640.

There is a clause in the section giving the poor debtor's exemption which allows the debtor to hold as exempt, among other things, "ten barrels of corn." (Code 1904, Sec. 3650.) This has given rise to controversy as to what constitutes a barrel of corn, and in order to settle the question, the language has been changed to read "fifty bushels of shelled corn."⁶

Wages owing to a laboring man who is a householder, not exceeding fifty dollars per month, are now exempt from distress, levy or garnishment (Code 1887, Sec. 3652); but many employers summoned in garnishment proceedings, fearing a liability upon themselves even when the wages are less than fifty dollars per month, or when more than this sum, fearing a liability for the whole amount, refuse to pay the wages, or any part thereof, until the garnishment proceedings are disposed of. The result is to tie up the wages until the return day of the summons in garnishment, and in many cases this causes much distress to the laboring man and his family. To meet this situation, the revision gives the laboring man a summary remedy to have his wages not exceeding fifty dollars per month declared exempt, and when he avails himself of this remedy, employers will have no ground whatever for refusing to pay the wages, when due, to the extent of the lawful exemption.⁷

The salaries of all state officials and employees, unless otherwise exempted, are now subject to garnishment.⁸ The revisors were of opinion that the state should not be garnished in any case, but knowing that the law had operated beneficially and effectively as to mere day laborers and employees of the state, enabling them to get credit when otherwise they could not have secured it, they struck out the provision concerning State officers and limited the section to employees. The places of mere employees can, in most instances, be more readily supplied than those of State officers, and if, for instance, the salaries of the Governor, Attorney-General and judges were entirely taken away by garnishment, the State might at some time be left impotent to discharge its functions.⁹

I now find myself at Chapter 275, the last in the Code. This

6. Sec. 6552.

8. Acts 1902-3-4, p. 136.

7. Sec. 6556.

9. Sec. 6559.

chapter is identical with Chapter 206 of the Code of 1887, except, of course, it contains different dates. It also contains one section ¹⁰ which was transferred from another part of the Code of 1887 to this chapter. The five sections of the chapter should be carefully considered, as they will be important when the new Code becomes effective. They need no explanation.

The revisors submit their work to the candid judgment of a bar that is generous in its impulses, honest in its investigations, and deliberate in its judgments, feeling assured that however that judgment may affect them, the interest of the people will not suffer at the hands of those who have ever placed the welfare of the State above that of the citizen, and the safety of the people above consideration for the individual.

10. Sec. 6570.